

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6, 249A.4, and 239B.4(6), the Department of Human Services amends Chapter 7, “Appeals and Hearings,” Chapter 41, “Granting Assistance,” and Chapter 93, “PROMISE JOBS Program,” Iowa Administrative Code.

These amendments clarify when benefits or services can continue pending the outcome of an appeal. Applicable rules in Chapter 7 were revised based on the implementation of the Affordable Care Act, and the rules became effective March 1, 2014. However, it has been discovered that the rule regarding continuation of benefits or services is unclear and needs to be further defined.

These amendments also update policies that allow the Department to implement a new ineligibility period for accessing Family Investment Program (FIP) benefits with an electronic access card at a prohibited location when certain criteria are met to include when an appeal is filed within ten days of the receipt of the notice implementing the intended action.

In addition, these amendments update policies that allow the Department to implement a new limited benefit plan (LBP) when certain criteria are met to include when an appeal is filed within ten days of the receipt of the notice implementing the intended action.

These amendments also change the requirement in the PROMISE JOBS record retention policy to reflect that records shall be retained for three years instead of five years.

These amendments replace references to “general education development” and “GED” with “high school equivalency” and “high school equivalency diploma (HSED).”

Finally, these amendments remove a reference that allows PROMISE JOBS to void a limited benefit plan when verification of work hours is received within ten days of the effective date of the LBP.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1588C** on August 20, 2014.

The Department received comments from one respondent during the comment period. The comments and the Department’s responses are as follows:

The respondent stated that the proposed amendments would allow the Department to discontinue benefits during a timely filed appeal when the appellant failed to return a complete review form. The respondent also stated that it is not clear from the language which program or benefits the change affects and that it seems logical that the change would affect Food Assistance when a recertification is due and certain medical assistance programs under similar circumstances.

The respondent requested that the Department make clear in the amendments which programs the amendments would affect. The respondent asked the Department to ensure that the rules for each of the affected programs reflect that benefits will cease if a complete review form is not returned by the participant/recipient. Finally, the respondent asked the Department to ensure that each participant/recipient is notified in the Notice of Decision when benefits are awarded or started and is informed in written materials and trainings that continuation of benefits is contingent upon completion and submission of review forms.

The Department responds that in accordance with 7 CFR 273.14(a), “No household may participate beyond the expiration of the certification period assigned in accordance with §273.10(f) without a determination of eligibility for a new period. The state agency must establish procedures for notifying households of expiration dates, providing application forms, scheduling interviews, and recertifying eligible households prior to the expiration of certification periods. Households must apply for recertification and comply with interview and verification requirements.”

In addition, 7 CFR 273.15(k) states that, “If a household requests a fair hearing within the period provided by the notice of adverse action, as set forth in §273.13, and its certification period has not expired, the household’s participation in the program shall be continued on the basis authorized immediately prior to the notice of adverse action, unless the household specifically waives continuation of benefits.”

For Food Assistance, a person is approved or certified for a specific time period. When the initial certification period is established, the person receives a Notice of Decision specifying the time period for which the person is eligible. At the end of the certification period, a new eligibility determination must be completed. The provisions of paragraph 7.9(2)“b” clearly state that assistance will not continue when benefits were time-limited through a certification period. The recertification form clearly tells the recipient that if the recipient does not return the review form, Food Assistance benefits will end. No other notice is provided to the recipient when the recipient fails to return a complete review form. The proposed amendment to paragraph 7.9(2)“d” does not apply to Food Assistance.

The amendment to subrule 7.9(2) applies to the Family Investment Program (FIP) and certain Medicaid coverage groups when the participant fails to return a complete review form. If this happens, the Department cannot establish ongoing eligibility and the participant’s assistance is canceled. The respondent requested that the Department ensure the rules for each program reflect that benefits will cease if a complete review form is not returned by the participant. The relevant rules to accommodate the respondent’s request already exist and can be found at subrule 40.27(4) and paragraph 75.52(4)“b.”

The respondent requested that continuation of benefits information be provided to the participant. The Department responds that when a Notice of Decision is issued indicating that assistance is canceled for failure to return a complete review form, it clearly tells the participant that the participant can get benefits again if the information is provided by the fourteenth day of the following month.

All Notices of Decision state on the back of the form that participants may keep their benefits until an appeal is final or through the end of the certification period, as long as the appeal is filed within ten calendar days of the date the notice is received or before the date the decision goes into effect. The Notice of Decision clearly tells participants how to continue their benefits, as long as they meet all other eligibility requirements.

The Department is required to advise each applicant and recipient of the right to appeal when any adverse action is taken. Written notification shall be given of the right to request a hearing, the procedure for requesting a hearing, the right to be represented by others at the hearing unless otherwise specified by statute or federal regulations and provision for payment of legal fees, if any. The Department is not required to provide written notification regarding continuation of benefits in written materials, other than in the Notice of Decision and in participant trainings.

The respondent stated that the proposed amendment to paragraph 93.7(1)“e” would do away with the ability of PROMISE JOBS to void a limited benefit plan (LBP) if the participant provides verification of work hours by the tenth day following the effective date of the LBP, that imposing an LBP without allowing the participant to rectify a mistake is harsh, unreasonable, and not required by law, and that there is no reasoning or justification given for removing this portion of the rule. The respondent asked that the Department rescind the proposed amendment.

The Department responds that there was a February 1, 2014, rule change, which no longer allows PROMISE JOBS to void a limited benefit plan if the participant provides verification of hours of employment or other activities by the tenth day following the effective date of the LBP. The Department unintentionally neglected to remove a reference to the provision when the provision became obsolete.

The Department is required to notify the participant in writing of the requirement to provide verification of hours of employment or other activities by the tenth calendar day of the month following the month that participation begins. If the participant does not provide the verification by the due date, the Department is required to send a written reminder, allowing the participant an additional five working days to submit the verification. Failure to provide the verification by the due date on the written reminder results in cancellation of FIP assistance under an LBP.

The Department has adopted the amendment in paragraph 93.7(1)“e” to remove the obsolete reference that allowed PROMISE JOBS to void a limited benefit plan when verification of work hours is received within ten days of the effective date of the LBP.

No changes were made by the Department to these amendments as the result of the comments received from the respondent. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on October 8, 2014.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 217.6, 249A.4, and 239B.4(6).

These amendments will become effective January 1, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 7.9(1) as follows:

7.9(1) *When assistance continues.* ~~Assistance shall not be suspended, reduced, restricted, or canceled, nor shall a license, registration, certification, approval, or accreditation be revoked, or other proposed adverse action be taken pending a final decision on an appeal when:~~

a. Assistance, subject to paragraph 7.9(1)“b,” shall not be suspended, reduced, restricted, or canceled, nor shall a license, registration, certification, approval, or accreditation be revoked or other proposed adverse action be taken pending a final decision on an appeal when:

a. (1) An appeal is filed within the timely notice period: before the effective date of the intended action; or

b. (2) The appellant requests a hearing within ten days from receipt of a notice of cancellation or reduction of food assistance, family investment program, or medical assistance suspending, reducing, restricting, or canceling benefits, based on the completed report form, including:

(1) Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-4083(MS);

(2) Medicaid Review, Form 470-3118, 470-3118(S), 470-3118(M), or 470-3118(MS);

The date on which the notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

e. b. If it is determined at a hearing that the issue involves only federal or state law or policy, assistance will be immediately discontinued.

ITEM 2. Amend subrule 7.9(2) as follows:

7.9(2) *When assistance does not continue.* ~~The adverse action appealed to suspend, reduce, restrict, or cancel assistance; revoke a license, registration, certification, approval, or accreditation; or take Assistance shall be suspended, reduced, restricted, or canceled; a license, registration, certification, approval, or accreditation shall be revoked; and other proposed action may be implemented shall be taken pending a final decision on appeal when:~~

a. An appeal is not filed within the timely notice period before the effective date of the intended action or within ten days from the date notice is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. Benefits or services were time-limited through a certification period or prior authorization for which notice was given when established or for which adequate notice was provided.

c. The appellant directs the worker in writing to proceed with the intended action.

d. Adverse action was taken because the appellant failed to return a complete review form.

ITEM 3. Amend subrule 7.9(5) as follows:

7.9(5) *Recovery of assistance when a new limited benefit plan is established.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new limited benefit plan period is established. A new limited benefit plan period shall be established when the department is affirmed in a timely appeal of the establishment of the limited benefit plan. All of the following conditions shall exist:

a. The appeal is filed within the timely notice period of the notice of decision or notice of action establishing the beginning date of the LBP: either:

(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the LBP, or

(2) Within ten days from the date on which a notice establishing the beginning date of the LBP is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. Assistance is continued pending the final decision of the appeal.

c. The department's action is affirmed.

ITEM 4. Amend subrule 7.9(6) as follows:

7.9(6) *Recovery of assistance when a new ineligibility period is established for the use of an electronic access card at a prohibited location.* Assistance issued pending the final decision of the appeal is not subject to recovery when a new ineligibility period is established for the use of an electronic access card at a prohibited location. A new ineligibility period pursuant to 441—subrule 41.25(11) shall be established when the department is affirmed in a timely appeal of the establishment of an ineligibility period for the use of an electronic access card at a prohibited location. All of the following conditions shall exist:

a. The appeal is filed ~~within the timely notice period of the notice of decision establishing the beginning date of the ineligibility period.~~ either:

(1) Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the ineligibility period, or

(2) Within ten days from the date on which a notice establishing the beginning date of the ineligibility period is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period.

b. Assistance is continued pending the final decision of the appeal.

c. The department's action is affirmed.

ITEM 5. Amend paragraph **41.25(11)“e”** as follows:

e. A new period of ineligibility shall be established when:

(1) A recipient ~~timely appeals the notice of decision establishing the ineligibility period,~~ files an appeal either:

1. Before the effective date of the intended action on the notice of decision or notice of action establishing the beginning date of the ineligibility period, or

2. Within ten days from the date on which a notice establishing the beginning date of the ineligibility period is received. The date on which notice is received is considered to be five days after the date on the notice, unless the beneficiary shows that the beneficiary did not receive the notice within the five-day period;

(2) Assistance is continued pending the final decision of the appeal; and

(3) The department's action is affirmed.

Assistance issued pending the final decision of an appeal is not subject to recovery pursuant to 441—subrule 7.9(6).

ITEM 6. Amend paragraph **93.2(2)“b”** as follows:

b. *Record keeping.* All PROMISE JOBS agencies shall maintain PROMISE JOBS participant case files and records for at least ~~five~~ three years, in either paper or electronic format. Records shall be maintained for longer than ~~five~~ three years if any litigation, audit, or claim is started and not resolved during that period. In these instances, the records must be retained for ~~five~~ three years after the litigation, audit, or claim is resolved. Case files must be disposed of in accordance with applicable federal requirements pertaining to confidentiality.

ITEM 7. Amend subparagraph **93.4(4)“b”(5)** as follows:

(5) Educational activities, including high school completion, ~~general education development (GED)~~ high school equivalency diploma (HSED) certification, adult basic education (ABE), English as a second language (ESL) training, vocational training, or postsecondary training up to and including a baccalaureate degree, as described in rule 441—93.8(239B).

ITEM 8. Amend subparagraph **93.4(4)“c”(1)** as follows:

(1) Participants aged 16 to 19 who are not parents and who have not completed high school shall be strongly encouraged to participate in educational activities to obtain a high school diploma or the equivalent. A high school education is recognized as important to achieving self-sufficiency. Participants shall be given information on the earning power of people with a high school education compared to those who do not so that participants are able to make an informed choice. If high school or GED high school equivalency completion is not included in a teenager's FIA, other FIA activities shall be required. High school or GED high school equivalency completion shall be proposed and reconsidered at the next FIA review.

ITEM 9. Amend paragraph **93.7(1)“e”** as follows:

e. Failure to provide verification. Failure to provide verification of work hours after receiving a written reminder will result in a limited benefit plan. ~~PROMISE JOBS can void the limited benefit plan if the participant provides verification of work hours by the tenth day following the effective date of the limited benefit plan.~~

ITEM 10. Amend subparagraph **93.8(1)“a”(3)** as follows:

(3) For participants attending high school or GED high school equivalency activities, adult basic education or English as a second language, the vocational goal is to improve employability by successfully completing the activity.

ITEM 11. Amend paragraph **93.8(3)“e”** as follows:

e. High school or GED high school equivalency completion. Any participant who does not have a high school diploma or GED high school equivalency diploma (HSED) shall be encouraged to obtain a diploma. A participant who is 18 years of age or older may be approved to return to regular high school only when the participant can graduate within one year of the normal graduation date. GED High school equivalency or high school courses and other types of vocational training may run concurrently.

ITEM 12. Amend subparagraph **93.8(3)“h”(1)** as follows:

(1) A participant with no postsecondary education may be approved for training resulting in a certificate of program completion or an academic degree, such as an associate or baccalaureate degree. Participants who have not completed a high school education or ~~GED~~ received a high school equivalency diploma (HSED) may be required to do so before courses leading to an associate degree or higher are approved.

ITEM 13. Amend paragraph **93.8(6)“d”** as follows:

d. Training expenses. Participants enrolled in high school or high school equivalency completion, ~~GED~~, ABE, ESL, or postsecondary vocational training may be eligible for payment of the following expenses of training when required for participation, subject to limits in subrule 93.11(4):

(1) to (6) No change.

ITEM 14. Amend paragraph **93.8(6)“e”** as follows:

e. Direct education costs. Participants enrolled in high school or high school equivalency completion, ~~GED~~, ABE, ESL, or short-term training programs of 29 weeks or less may also be eligible for payment for direct education costs, including:

(1) to (6) No change.

ITEM 15. Amend subparagraph **93.10(1)“a”(2)** as follows:

(2) PROMISE JOBS shall allow a participant five working days from the date notice is mailed to appear for an FIA activity or work-site assignment or to provide medical documentation, ~~verification of hours of participation~~, employment verification, or any other verification, except as otherwise specified in 93.10(2).

ITEM 16. Amend subparagraph **93.10(2)“b”(3)** as follows:

(3) EXCEPTION: If the participant is under age 20 and in high school or ~~GED~~ high school equivalency classes, the participant may verify the hours by completing and submitting the PROMISE JOBS Time and Attendance Report monthly. The training provider does not need to sign the form.

ITEM 17. Amend subparagraph **93.11(4)“a”(1)** as follows:

(1) Tuition payments for high school or high school equivalency completion, ~~GED~~, ABE, ESL, or short-term training programs of 29 weeks or less shall not exceed the rate charged by the Iowa community college located nearest the participant’s residence which offers a course or program comparable to the one in which the participant plans to enroll. If an Iowa community college does not offer a comparable program, the maximum tuition rate payment shall not exceed the Iowa resident rate charged by the out-of-state area school located nearest the participant’s residence.

[Filed 10/8/14, effective 1/1/15]

[Published 10/29/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/29/14.